

REMARKS/ARGUMENTS

Claims 23, 25-28 and 33, and 35-42 are active in this application.

Claim 23 has been amended to define the functional effect of the inactivated poxB gene as suggested by the Examiner at pp. 4 and 5 of the Action. Support for the amendment is found on pp. 5-6 of the specification.

No new matter has been added.

As a result of adopting the Examiner's suggestion, it is believed that the two rejections under 35 USC, 112 first paragraph are no longer applicable

Withdrawal of the rejections is requested.

To the rejections under the doctrine of obviousness-type double patenting (provisional or otherwise):

The following applications were abandoned according to the USPTO's PAIR system:

10/483,983, 10/784,914, 10/784,902, 11/017,120, 10/937,598, 10/937,554 , 10/483,416, 10/481,631, 10/616,309, 10/483,417 , 10/481,823, 10/114,048 and 10/186,999 ([a], [c], [d],[e], [f], [h], [j], [k] [o], [p], [q] [w] and [z]) have been abandoned.

10/114,073 ([y]) issued as U.S. patent no. 7,052,883 and a terminal disclaimer was already filed.

10/481,743 [r] has issued as US patent no. 7,320,882 and a terminal disclaimer is attached.

10/416,364 [v] has issued as US patent no. 7,256,021 and a terminal disclaimer is attached.

10/481,745 [i] has issued as US patent no. 7,241,600 and claims a process involving phosphoenol pyruvate protein phosphotransferase (ptsl) not poxB as in the present claims.

Pts 1 is also not identified in the present claims. Further, the claim cited in the '745 application and that was the basis for the rejection is not present in the issued patent.

Withdrawal of the rejection for this patent is requested.

10/481,746 [m] has issued as US patent no. 7,172,883 and claims a process involving ahpC and ahpF not poxB as in the present claims. ahpC and ahpF are also not identified in the present claims. Further, the claim cited in the '746 application and that was the basis for the rejection is not present in the issued patent. Withdrawal of the rejection for this patent is requested.

10/817,431 [s] has issued as US patent no. 7,211,415 and claims a process involving a specified protein not poxB as in the present claims. Further dependent claims provide additional overexpressed genes but not one of them is noted as poxB (cited elsewhere in the specification of the '415 patent). The specified sequence in the '415 patent is also not identified in the present claims. Further, the claim cited in the '431 application and that was the basis for the rejection is not present in the issued patent. Withdrawal of the rejection for this patent is requested.

10/484,198 [n] is pending and claims a process involving sucB and sucB not poxB as in the present claims. sucB and sucB are also not identified in the present claims. Further, the claim cited in the '198 application is not present in the pending claims. Withdrawal of the rejection for this application is requested.

10/733,776 [u] is pending and claims a process yigF not poxB as in the present claims. yigF is also not identified in the present claims. Further, the claim cited in the '776 application and that was the basis for the rejection is not present in the pending claims. Withdrawal of the rejection for this application is requested.

10/114,043 is pending and claims a process involving the dgsA gene not poxB as in the present claims dgsA is also not identified in the present claims. Further, the claim cited in the '043 application and that was the basis for the rejection is not present in the pending claims. Withdrawal of the rejection for this application is requested.

With respect to the rejections based on

10/794,417[b] is pending

10/483,413 [g] is pending

10/491,893 [l] is pending

10/812,315 [t] is pending.

Applicants request that these rejections be held in abeyance since the alleged conflicting claims have not yet been patented. Further, Applicants note the following from MPEP § 822.01:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Indeed, as apparent with respect to many of the earlier cited co-pending applications, claims change during prosecution and therefore the present application should be allowed to issue.

Should the Examiner wish to discuss any aspect of this application, he is invited to contact the Applicants' undersigned representative.

Application No. 10/076,416
Reply to Office Action of November 30, 2007

A Notice of Allowance is requested.

Respectfully submitted,

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